



# FEDERALLY SPEAKING



by Barry J. Lipson

Number 46

Welcome to *Federally Speaking*, an editorial column for **ALL** interested in the **Federal Scene**, originally compiled for the members of the Western Pennsylvania Chapter of the Federal Bar Association and all FBA members. Its purpose is to keep you abreast of what is happening in the Federal arena, whether it be a landmark US Supreme Court decision, a new Federal regulation or enforcement action, a “heads up” to Federal CLE opportunities, or other Federal legal and related occurrences of note. Its threefold objective is to educate, to provoke thought, and to entertain. This is the 46th column in this series, and together with prior columns is available on the website of the U.S. District Court for the Western District of Pennsylvania: <http://www.pawd.uscourts.gov/Pages/federallyspeaking.htm>.

## LIBERTY’S CORNER

### War on the Separation of Church and State?

Thomas Jefferson, as early as 1801, set forth for us the “original intent” of our Founding Fathers on the *Bill of Rights* guarantee of *Separation of Church and State*. “I contemplate with sovereign reverence,” he observed, “that act of the whole American people which declared that their legislature should ‘**make no law respecting an establishment of religion, or prohibiting the free exercise thereof,**’ thus building a *wall* of separation between **Church & State**. ... That society shall here know that the limit of its rightful power is the enforcement of social conduct; while the right to question the religious principles producing that conduct is beyond their cognizance.” **Thomas Jefferson’s** letters to the *Danbury and Delaware Baptist Associations* of January 1, 1802 and July 2, 1801, citing the **First Amendment to the U.S. Constitution** (emphasis added; see *Federally Speaking*, No. 18).

President George W. Bush, on January 29<sup>th</sup>, 2001, in his *first* Executive Order, “launched his ‘faith-based’ initiative ... by establishing a White House office to assist and encourage faith-based organizations is seeking federal funds” (*About*, 1/30/01). Flash forward four plus years. According to the BBC, in its “major three-part series” *Elusive Peace: Israel and the Arabs*, broadcast on BBC Two, October 10, 17 and 24, 2005: “Abu Mazen, Palestinian Prime Minister, and Nabil Shaath, his Foreign Minister, describe their first meeting with President Bush in June 2003. Nabil Shaath says: ‘President Bush said to all of us: ‘I’m driven with a mission from God. God would tell me, ‘George, go and fight those terrorists in Afghanistan.’ And I did, and then God would tell me, ‘George, go and end the tyranny in Iraq ...’ And I did. And now, again, I feel God’s words coming to me, ‘Go get the Palestinians their state and get the Israelis their security, and get peace in the Middle East.’ And by God I’m gonna do it.’” Then, in his 2005 Holiday Card, the President proclaimed: “The Lord is my strength and my shield; in him my heart trusts; so I am helped, and my heart exults, and with my song I give thanks to him. **Psalm 28:7 (RSV)** [Old Testament].”

True the President did condition his *first* Executive Order “to the extent permitted by law;” and his 2005 Card did get him in much trouble with those Fundamentalist Christians who “unperceivable” perceive a “*War on Christmas*” by those who put the “X” in Xmas (even though the letter “X” is apparently actually the first letter of Christ in Greek), and/or who, like the President, do not “Wish You a Merry Christmas”, but give a “wishy-washy” wish such as the President’s: “*With best wishes for a holiday season of hope and happiness*” (underlining added). But is this enough to counterbalance our government now being allegedly “driven with a mission from God,” a mission apparently not entirely shared by the first President Bush (see, for example, *Federally Speaking*, No. 45)? Indeed, is there in reality a “*War on Christmas*,” or is the real war a “*War on the Separation of Church and State?*”

Over a decade ago, in the companion column *CorpLaw® Commentaries* (1995), your columnist explored “*Religious Freedom In The United States Of Asq-Shamel*,” starting with the quest for religious freedom in our United States by pre-Columbian Mid Eastern Christian refugees escaping persecution by the Christian “*Heresy of Arius*” for their belief that Jesus was the Son of God; recognizing the “*fear of State imposed religion*” protested by the *Mayflower Compact*; and acknowledging the importance of protecting our hard won religious liberties “that are so staunchly guarded by the *First Amendment* and the *Bill of Rights*.” With a feeling of intensified *déjà vu*, here then are these *Commentaries* examining the atrocity of the “trousered-men ... forcing upon the brethren the *Heresy of Arius*,” the roots of religious freedom in these United States; and the need to protect the *First Amendment* and the religious safeguards contained in our *Constitutional* system of “*rule by the majority with due regard to the minority*,” to wit:

### **Religious Freedom in the United States of Asq-Shamel**

The trousered-men vandalized the land, forcing upon the brethren the heresy of Arius the Alexandrian. To call themselves of the Household of the Faithful and yet profess that Joshua ben Joseph “was not of the same substance” as the Exalted One, hallowed be His Name, was unthinkable. To reduce the Son of God to being no more than merely “the best of created beings,” was intolerable blasphemy. Surely these vandals will be remembered in infamy beyond the Millennium to come, and even to the Second Coming and the Day of Judgment, may they come first.

Their heretical hereditary Kings even now rule our fair Byzantine Land, replacing by the power of the State, our divine Orthodoxy with their blasphemous Arianism. We of the True Belief cannot abide this religious persecution one more instant. Even now a ship awaits to take us from the clutches of these trouser-wearers, these accursed Arian Vandals. Forthwith we shall sail “across the void of waves” toward the setting Sun, to free and unvandalized “Asq-Shamel,” the Northern Land.

Mere hysterical fanatic fanaticism, created by fertile imaginations to make a point? No, historical fact, fundamentally!

The “fair Byzantine Land” was located in North Africa, in what is now Moslem Morocco. And “free and unvandalized Asq-Shamel, the Northern Land,” the United States of Asq-Shamel? Why that is now the Land of the First Amendment, where the Bill of Rights protects the rights of the Orthodox and the Arian alike, to be free from being forced to practice any religion, by allowing each of them to practice the religion of their choice, or to practice no religion at all; and by mandating separation of Church and State, so that no modern-day Vandal Kings can use the power of the State to force their religious views on others.

That's right, modern Asq-Shamel is the nonsectarian USA, the United States of America. More specifically, the Byzantines practiced their Christian Orthodoxy free from interference from the Christian Arian Vandals over 1500 years ago, well before either Mohammed or the United States were conceived, in what is now a state forest in southern Connecticut. Proof of this heroic resistance to religious persecution is documented in the United States by excavations done by the American Institute for Archaeological Research, and by a contemporary post-persecution inscription discovered in Morocco in 1926. Therein, in

"the name of the hermitage of the fraternity now dispersed abroad," one of these exiles who had sailed to "Asq-Shamel," gives "the testimony of an eye-witness who has returned by ship, that has put into Teth seaport now in his homeland a second time. Ended are the years of trouble by the trousered-men."

These Byzantines' religious views in many respects are still paralleled by those of modern Roman and Orthodox Catholics, while certain modern Protestant denominations even today tend more towards the religious views of the Arians. But of more importance, the Byzantines' religious persecution parallels in many respects the religious persecution suffered by various later groups who also fled to the United States to practice their religious beliefs free from interference by the State or the State Religion.

Thus, for example, the Pilgrims found it necessary to abandon merry old England, and establish, in 1620, Plymouth Colony in Massachusetts, in order to freely practice their "purified" version of Christianity. The Pilgrims were English Puritans who were at odds with and discriminated against by the Church of England (as to a worse degree were English Catholics), the State Church of England. They left this State Church because it would not "purify" itself from elaborate ceremonies and forms.

This fear of State imposed religion caused the Pilgrims to adopt a plan in the Mayflower Compact "for a civil body politic" to enact "just and equal laws;" and caused our founding fathers to mandated separation of Church and State. This fear is also why so many religious citizens supported and still support this mandate, especially as unlike the Byzantines they had no place to which to return, and they know that there is no guarantee that it will be their religion that will become and/or remain the "State Religion." Indeed, if our Christian Orthodox Byzantines were to return to their North African homeland today, they would surely be most distraught to find it dominated by those "upstart" Moslems who view Mohammed as "the best of created beings," and place even him before the "Son of God."

Today, in the United States of Asq-Shamel, most of the world's religions are represented and live side by side, freely practicing their religious beliefs under the protection of the First Amendment to the United States Constitution, including such diverse groups as the Amish and Hasidic Jewry, who both freely and openly retain their Old World practices, customs and dress as part of their deep religious convictions. It would be a SHAME and SHAMELess if we here in Asq-SHAMEL looked asquint and askance at the religious protections afforded by the Bill of Rights and/or at the necessary mechanisms provided thereby to assure the continued viability of our religious freedoms.

Suspicion, instead, must be directed toward those critics and modern-day Vandal Kings who attempt to vandalize the First Amendment for doing that most critical of jobs that has been assigned to it by our founding fathers themselves, the guarding of our religious liberties. "We the People" must stand steadfast! We must instill and reinforce those values which will enable us and our children to understand and strive for the protection of those hard won liberties that are so staunchly guarded by the First Amendment and the Bill of Rights. Without these safeguards "rule by the majority with due regard to the minority" will become a farce, and the old adage "power corrupts and absolute power corrupts absolutely" will be the "Bill of Wrongs" and the "Law of the Land" for the vandalized Land of Asq-Shamel. What an ASQtronomical-SHAME for the Land of the free, that would be!!!

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**This Column is dedicated to the preservation of the U.S. Constitution & the Bill of Rights.**

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